

IC 23-19-6

Chapter 6. Administration and Judicial Review

Effective 7-1-2008.

IC 23-19-6-1

Securities division; securities commissioner; unlawful acts; investor education initiatives; securities division enforcement account

Effective 7-1-2008.

Sec. 1. (a) This article shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this article under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this article. The commissioner shall serve at the will of the secretary of state.

(b) The secretary of state:

(1) shall employ a chief deputy, attorneys, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this article; and

(2) shall fix their compensation with the approval of the budget agency.

(c) It is unlawful for the commissioner or an officer, employee, or designee of the commissioner to use for personal benefit or the benefit of others records or other information obtained by or filed with the commissioner that are not public under section 7(b) of this chapter. This article does not authorize the commissioner or an officer, employee, or designee of the commissioner to disclose the record or information, except in accordance with section 2, 7(c), or 8 of this chapter.

(d) This article does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(e) The commissioner may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the commissioner may collaborate with public and nonprofit organizations with an interest in investor education. The commissioner may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the commissioner to require participation or monetary contributions of a registrant in an investor education program.

(f) Fees and funds of whatever character accruing from the administration of this article shall be accounted for by the secretary

of state and shall be deposited with the treasurer of state to be deposited by the treasurer of the state in either the state general fund or the enforcement account referenced below. Expenses incurred in the administration of this article shall be paid from the state general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, grants and donations under subsection (e), costs of investigations, and civil penalties recovered under sections 3(b) and 4(d) of this chapter shall be deposited by the treasurer of state in a separate account to be known as the securities division enforcement account. The funds in the enforcement account shall be available, with the approval of the budget agency:

- (1) to augment and supplement the funds appropriated for the administration of this article; and
- (2) for grants and awards to nonprofit entities for programs and activities that will further investor education and financial literacy in the state.

The funds in the enforcement account do not revert to the state general fund at the end of any state fiscal year.

(g) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the commissioner and the commissioner's designee to represent the commissioner and the securities division in any proceeding involving enforcement or defense of this article.

(h) Neither the secretary of state, the commissioner, nor an employee of the securities division shall be liable in their individual capacity, except to the state, for an act done or omitted in connection with the performance of their respective duties under this article.

(i) The commissioner shall take, prescribe, and file the oath of office prescribed by law. The commissioner, chief deputy commissioner, and each attorney or investigator designated by the commissioner are police officers of the state and shall have all the powers and duties of police officers in making arrests for violations of this article, or in serving any process, notice, or order connected with the enforcement of this article by whatever officer, authority, or court issued and shall comprise the enforcement department of the division and are considered a criminal justice agency for purposes of IC 5-2-4 and IC 10-13-3.

(j) The provisions of this article delegating and granting power to the secretary of state, the securities division, and the commissioner shall be liberally construed to the end that:

- (1) the practice or commission of fraud may be prohibited and

prevented;

(2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and

(3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

It is the intent and purpose of this article to delegate and grant to and vest in the secretary of state, the securities division, and the commissioner full and complete power to carry into effect and accomplish the purpose of this article and to charge them with full and complete responsibility for its effective administration.

(k) Copies of any statement and documents filed in the office of the secretary of state and of any records of the secretary of state certified by the commissioner shall be admissible in any prosecution, action, suit, or proceeding based upon, arising out of, or under this article to the same effect as the original of such statement, document, or record would be if actually produced.

(l) IC 4-21.5 is not applicable to any of the proceedings under this article.

As added by P.L.27-2007, SEC.23.

IC 23-19-6-2

Investigations; subpoenas; depositions; relief; hearings; use immunity; certificate of compliance or noncompliance; witness fees

Effective 7-1-2008.

Sec. 2. (a) The commissioner may:

(1) conduct public or private investigations within or outside this state which the commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this article or a rule adopted or order issued under this article, or to aid in the enforcement of this article or in the adoption of rules and forms under this article;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this article or a rule adopted or order issued under this article if the commissioner determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) For the purpose of an investigation under this article, the commissioner or the commissioner's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the

commissioner considers relevant or material to the investigation. Upon order of the commissioner or a hearing officer appointed by the commissioner in any hearing, depositions may be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner or a hearing officer appointed by the commissioner.

(c) If a person does not appear or refuses to testify, file a statement, or produce records, or otherwise does not obey a subpoena as required by this article, the commissioner or hearing officer appointed by the commissioner may apply to the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted to enforce compliance. The court may:

- (1) hold the person in contempt;
- (2) order the person to appear before the commissioner or hearing officer appointed by the commissioner;
- (3) order the person to testify about the matter under investigation or in question;
- (4) order the production of records;
- (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;
- (6) impose a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation; and
- (7) grant any other necessary or appropriate relief.

(d) This section does not preclude a person from applying to the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) If a witness, in any hearing, inquiry, or investigation conducted under this article, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

- (1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and
- (2) the witness must answer the questions asked and produce the items requested. A grant of use immunity does not prohibit the use of evidence that the witness gives in a hearing,

investigation, or inquiry from being used in a prosecution for perjury under IC 35-44-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(f) At the request of the securities regulator of another state or a foreign jurisdiction, the commissioner may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The commissioner may provide the assistance by using the authority to investigate and the powers conferred by this section as the commissioner determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this article or other law of this state if occurring in this state. In deciding whether to provide the assistance, the commissioner may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the commissioner on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the commissioner to carry out the request for assistance.

(g) In any prosecution, action, suit, or proceeding based upon or arising out of or under the provisions of this article, a certificate duly signed by the commissioner showing compliance or noncompliance with the provisions of this article, respecting the security in question or respecting compliance or noncompliance of this article, by any issuer, broker-dealer, investment advisor, or agent, shall constitute prima facie evidence of compliance or noncompliance with the provisions of this article, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce this article.

(h) Each witness who shall appear before the commissioner or a hearing officer appointed by the commissioner by order shall receive for the witness's attendance the fees and mileage provided for witnesses in civil cases, which shall be audited and paid by the state in the same manner as other expenses of the securities division are audited and paid upon the presentation of proper vouchers sworn to by the witnesses and approved by the commissioner. However, no witnesses subpoenaed at the instance of parties other than the commissioner or a hearing officer appointed by the commissioner shall be entitled to any fee or compensation from the state.

As added by P.L.27-2007, SEC.23.

IC 23-19-6-3

Violations; injunctions; other remedies

Effective 7-1-2008.

Sec. 3. (a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this article or a rule adopted or

order issued under this article or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this article or a rule adopted or order issued under this article, the commissioner may maintain an action in the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enjoin the act, practice, or course of business and to enforce compliance with this article or a rule adopted or order issued under this article.

(b) In an action under this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator;

(B) ordering a receiver or conservator appointed under clause (A) to take charge and control of a respondent's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) imposing a civil penalty up to ten thousand dollars (\$10,000) per violation and an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this article or the predecessor act or a rule adopted or order issued under this article or the predecessor act; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) The commissioner may not be required to post a bond in an action or proceeding under this article.

(d) Penalties collected under this section shall be deposited in the securities division enforcement account established under section 1 of this chapter.

As added by P.L.27-2007, SEC.23.

IC 23-19-6-4

Violations; investigations; cease and desist orders and other orders; hearings; civil penalties; appeals; civil contempt; certified copy of order

Effective 7-1-2008.

Sec. 4. (a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this

article or a rule adopted or order issued under this article, the commissioner may:

- (1) investigate and may issue, with or without a prior hearing, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the legal rate of interest, directed to a person who has violated this article or a rule or order under this article;
- (2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under IC 23-19-4-1(b)(1)(D) or IC 23-19-4-1(b)(1)(F) or an investment adviser under IC 23-19-4-3(b)(1)(C); or
- (3) issue an order under IC 23-19-2-4.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within forty-five (45) days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered under subsection (b), the hearing must be held within fifteen (15) days of receipt. A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the commissioner may impose a civil penalty up to ten thousand dollars (\$10,000) per violation. Penalties collected under this section shall be deposited in the securities division enforcement account established under section 1 of this chapter.

(e) In a final order, the commissioner may charge the cost of an investigation or proceeding for a violation of this article or a rule adopted or order issued under this article.

(f) If a petition for judicial review of a final order is not filed in accordance with section 9 of this chapter, the commissioner may file a certified copy of the final order with the clerk of a court with jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same

manner as a judgment of the court.

(g) If a person does not comply with an order under this section, the commissioner may petition a court with jurisdiction to enforce the order. The court may not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not greater than twenty thousand dollars (\$20,000) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(h) The commissioner shall send a certified copy of every final order that suspends or revokes a person's registration under this article, or that orders a person who is not registered under this article to cease and desist from violating this article, to the insurance commissioner appointed under IC 27-1-1-2. The insurance commissioner shall act in accordance with IC 27-1-15.6-29.5.

As added by P.L.27-2007, SEC.23.

IC 23-19-6-5

Rules, forms, and orders; financial statements; interpretive opinions and determinations; good faith conduct; public hearings

Effective 7-1-2008.

Sec. 5. (a) The commissioner may:

- (1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this article and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;
- (2) by rule, define terms, whether or not used in this article, but those definitions may not be inconsistent with this article; and
- (3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Under this article, a rule or form may not be adopted or amended, or an order issued or amended, unless the commissioner finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this article.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1938 (15 U.S.C. 78o(h)) and Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), the commissioner may require that a financial statement filed under this article be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this article. A rule adopted or order issued under this article may establish:

- (1) subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) and Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), the form and

content of financial statements required under this article;
(2) whether unconsolidated financial statements must be filed;
and
(3) whether required financial statements must be audited by an independent certified public accountant.

(d) The commissioner may provide interpretative opinions or issue determinations that the commissioner will not institute a proceeding or an action under this article against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this article. The commissioner shall charge a fee of one hundred dollars (\$100) for an interpretive opinion or determination.

(e) A penalty under this article may not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith and reasonably believed to be conforming to a rule, form, or order of the commissioner under this article.

(f) A hearing in an administrative proceeding under this article must be conducted in public unless the commissioner finds a statutory basis that would allow the hearing to be closed to the public.

As added by P.L.27-2007, SEC.23. Amended by P.L.230-2007, SEC.19.

IC 23-19-6-6

Public register of filings; charges

Effective 7-1-2008.

Sec. 6. (a) The commissioner shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this article or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this article or the predecessor act; and interpretative opinions or no-action determinations issued under this article.

(b) The commissioner shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) The commissioner shall furnish a copy of a record that is a public record, or a certification that the public record does not exist, to a person that so requests. A rule adopted under this article may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the commissioner of a record's nonexistence is prima facie evidence of a record or its nonexistence.

As added by P.L.27-2007, SEC.23.

IC 23-19-6-7

Public records; inspection and copying; confidential records

Effective 7-1-2008.

Sec. 7. (a) Except as otherwise provided in subsection (b), records obtained by the commissioner or filed under this article, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for inspection and copying.

(b) The following records are confidential and are not available for public inspection and copying under subsection (a):

(1) A record obtained by the commissioner in connection with an audit or inspection under IC 23-19-4-11(d) or an investigation under section 2 of this chapter.

(2) A part of a record filed in connection with a registration statement under IC 23-19-3-1 and IC 23-19-3-3 through IC 23-19-3-5 or a record under IC 23-19-4-11(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law and approved by the commissioner.

(3) A record that is not required to be provided to the commissioner or filed under this article and is provided to the commissioner only on the condition that the record will not be subject to public examination or disclosure.

(4) Confidential records received from a person specified in section 8(a) of this chapter.

(5) Any Social Security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed.

(6) A record obtained by the commissioner through a designee of the commissioner that a rule or order under this article determines has been:

(A) expunged from the commissioner's records by the designee; or

(B) determined to be confidential by that designee if the commissioner finds the determination to be based on statutory authority.

(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 8(a) of this chapter, the commissioner may disclose a record obtained in connection with an audit or inspection under IC 23-19-4-11(d) or a record obtained in connection with an investigation under section 2 of this chapter.

As added by P.L.27-2007, SEC.23. Amended by P.L.230-2007, SEC.20.

IC 23-19-6-8

Uniformity objective; cooperation with agencies; policies

Effective 7-1-2008.

Sec. 8. (a) The commissioner shall, in its discretion, cooperate, coordinate, consult, and, subject to section 7 of this chapter, share records and information with the securities regulator of another state,

Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, or a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this article, the commissioner shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

- (1) Maximizing effectiveness of regulation for the protection of investors.
- (2) Maximizing uniformity in federal and state regulatory standards.
- (3) Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

- (1) establishing or employing one (1) or more designees as a central depository for registration and notice filings under this article and for records required or allowed to be maintained under this article;
- (2) developing and maintaining uniform forms;
- (3) conducting a joint examination or investigation;
- (4) holding a joint administrative hearing;
- (5) instituting and prosecuting a joint civil or administrative proceeding;
- (6) sharing and exchanging personnel;
- (7) coordinating registrations under IC 23-19-3 and IC 23-19-4-1 through IC 23-19-4-4 and exemptions under IC 23-19-2-3;
- (8) sharing and exchanging records, subject to section 7 of this chapter;
- (9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;
- (10) formulating common systems and procedures;
- (11) notifying the public of proposed rules, forms, statements of policy, and guidelines;
- (12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, considered necessary or appropriate to promote or achieve uniformity; and
- (13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce

the burden of raising investment capital by small businesses.
As added by P.L.27-2007, SEC.23.

IC 23-19-6-9

Appeals from orders; transcripts; trial de novo

Effective 7-1-2008.

Sec. 9. (a) An appeal may be taken by:

- (1) any issuer, investment adviser, or registered broker-dealer whose application for registration of an issue of securities may have been granted or denied, from any final order of the commissioner respecting that application or registration;
- (2) any applicant for registration as a broker-dealer, investment adviser, or agent of any registered broker-dealer, investment adviser, or agent, from any final order of the commissioner affecting the application or registration as a broker-dealer, investment adviser, or agent;
- (3) any person against whom a civil penalty has been imposed under section 3(b) or 4(d) of this chapter, from the final order of the commissioner imposing the civil penalty; or
- (4) any person who is named a respondent, from any final order issued by the commissioner under section 2, 3, or 4 of this chapter;

to the circuit or superior court of Marion County or the county wherein the person taking the appeal resides or maintains a place of business.

(b) Within twenty (20) days after the entry of the order, the commissioner shall be served with:

- (1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;
- (2) a demand in writing for a certified transcript of the record and of all papers on file in the commissioner's office affecting or relating to the order; and
- (3) a bond in the penal sum of five hundred dollars (\$500) to the state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that shall be adjudged against the appellant.

(c) After the commissioner has been served with the items specified in subsection (b), the commissioner shall within ten (10) days make, certify, and deliver to the appellant the transcript, and the appellant shall within five (5) days file the same and a copy of the notice of appeal with the clerk of the court, which notice of appeal shall stand as appellant's complaint, and the commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the order of the commissioner from which the appeal is taken. If the order of the

commissioner is reversed, the court shall in its mandate specifically direct the commissioner as to the commissioner's further action in the matter, including the making and entering of any order or orders in connection therewith and the conditions, limitations, or restrictions to be contained. The commissioner is not barred from revoking or altering the order for any proper cause that may thereafter accrue or be discovered. If the order is affirmed, the appellant is not barred after thirty (30) days from filing a new application if the application is not otherwise barred or limited. The appeal shall not in any way suspend the operation of the order appealed from during the pendency of the appeal unless upon proper order of the court. An appeal may be taken from the judgment of the court on any appeal on the same terms and conditions as an appeal is taken in civil actions. *As added by P.L.27-2007, SEC.23.*

IC 23-19-6-10 **Jurisdiction**

Effective 7-1-2008.

Sec. 10. (a) IC 23-19-3-1, IC 23-19-3-2, IC 23-19-4-1(a), IC 23-19-4-2(a), IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-5-1, IC 23-19-5-6, IC 23-19-5-9, and IC 23-19-5-10 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in Indiana or the offer to purchase or the purchase is made and accepted in Indiana.

(b) IC 23-19-4-1(a), IC 23-19-4-2(a), IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-5-1, IC 23-19-5-6, IC 23-19-5-9, and IC 23-19-5-10 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in Indiana or the offer to sell or the sale is made and accepted in Indiana.

(c) For the purpose of this section, an offer to sell or to purchase a security is made in Indiana, whether or not either party is then present in Indiana, if the offer:

- (1) originates from within Indiana;
- (2) is directed by the offeror to a place in Indiana and received at the place to which it is directed; or
- (3) is directed by the offeror to a resident of Indiana.

(d) For the purpose of this section, an offer to purchase or to sell is accepted in Indiana, whether or not either party is then present in Indiana, if the acceptance:

- (1) is communicated to the offeror in Indiana and the offeree reasonably believes the offeror to be present in Indiana and the acceptance is received at the place in Indiana to which it is directed or to another place in Indiana; and
- (2) has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) An offer to sell or to purchase is not made in Indiana when a publisher circulates, or there is circulated on the publisher's behalf, in Indiana a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in Indiana, or that

is published in Indiana but has had more than two-thirds (2/3) of its circulation outside Indiana during the previous twelve (12) months, or when a radio or television program or other electronic communication originating outside Indiana is received in Indiana. A radio or television program or other electronic communication is considered as having originated in Indiana if either the broadcast studio or the originating source of transmission is located in Indiana, unless:

(1) the program or communication is syndicated and distributed from outside Indiana for redistribution to the general public in Indiana;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside Indiana for redistribution to the general public in Indiana;

(3) the program or communication is an electronic communication that originates outside Indiana and is captured for redistribution to the general public in Indiana by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in Indiana, but which is not intended for distribution to the general public in Indiana.

(f) IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-4-5(a), IC 23-19-5-2, IC 23-19-5-5, and IC 23-19-5-6 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

As added by P.L.27-2007, SEC.23.

IC 23-19-6-11

Consent to service of process; conduct constituting agent for service of process; procedures; continuances

Effective 7-1-2008.

Sec. 11. (a) An irrevocable consent to service of process required by this article must be signed and filed in the form required by a rule or order under this article. A consent appointing the secretary of state as the person's agent for service of process in an action or proceeding against the person, or the person's successor or personal representative under this article or a rule adopted or order issued under this article after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this article or a rule adopted or order issued under this article and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the

appointment of the secretary of state as the person's agent for service of process in an action or proceeding against the person or the person's successor or personal representative.

(c) Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the secretary of state, but it is not effective unless:

- (1) the plaintiff, which may be the commissioner, promptly sends notice of the service and a copy of the process, return receipt requested, to the respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address of the respondent, or takes other reasonable steps to give notice; and
- (2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the commissioner in a proceeding before the commissioner, allows.

(d) Service under subsection (c) may be used in a proceeding before the commissioner or by the commissioner in a civil action in which the commissioner is the moving party.

(e) If process is served under subsection (c), the court, or the commissioner in a proceeding before the commissioner, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

As added by P.L.27-2007, SEC.23.